

Abraham Lincoln and Civil Liberties

Overview:

Students will examine views on civil liberties and the right of habeas corpus during the Civil War.

Materials: (Additional Materials provided as separate PDF files)

Lincoln's Proclamation Suspending the Writ of Habeas Corpus

<http://teachingamericanhistory.org/library/index.asp?document=425>

Letter to General Winfield Scott, 1861

<http://teachingamericanhistory.org/library/index.asp?document=414>

Opinion of Chief Justice, Roger B. Taney, 1863 <http://fly.hiwaay.net/~pspoole/merry.htm>

Lincoln's reply to Erastus Corning, 1863

[Http://teachingamericanhistory.org/library/index.asp?document=612](http://teachingamericanhistory.org/library/index.asp?document=612)

Aim/Essential Question

Was Lincoln justified in suspending habeas corpus and civil liberties during the civil war?

Background Information:

The right of habeas corpus is guaranteed to all Americans according to the U.S. Constitution. In 1861, shortly after being sworn in as President, Abraham Lincoln suspended the right of habeas corpus to residents from Washington, D.C. to the Maryland and Pennsylvania state lines. The extension of the scope of suspension occurred two days after the announcement of the preliminary Emancipation Proclamation in 1862 and was largely aimed at quelling opposition to the militia draft in Maryland and Missouri. His actions were based on reports of subversive activity in the area. As Commander-in-Chief Lincoln viewed this action as his Constitutional prerogative. Congress, while not in session, viewed it otherwise. In 1863 Erastus Corning, an influential upstate New York Democratic politician, wrote Lincoln about the arrest of former Ohio Congressman, Clement G. Vallandigham. Vallandigham, an outspoken Peace Democrat, had been arrested for inflammatory remarks and was eventually escorted to the Confederate lines in Kentucky. Lincoln wrote Corning offering his argument about the place of civil liberties during times of emergency and a justification of the treatment of the Ohio representative.

In preparation for this activity students should read Article I, Section 9, Paragraph 2 of the U.S. Constitution and the First Amendment to the Constitution. Students should be familiar with the term habeas corpus.

Objectives:

1. Students will explain a writ of habeas corpus.
2. Students will provide arguments against Lincoln's suspension of the writ in 1861 and 1862.
3. Students will examine the conflict between the need for security and the maintenance of civil liberties during the Civil War.

4. Students will determine whether or not Lincoln was justified in suspending habeas corpus.
5. Students will debate the conflict between security and civil liberties since 9/11.

Motivation: Examine Article I, Section 9 of the Constitution. What does it say about the writ of habeas corpus?

Machiavelli in *The Prince* states that “real virtue lies in realism if the state is threatened and people are endangered, the suspension of civil liberties, marshal law and the death penalty are justified.” Explain Machiavelli’s statement.

How does Machiavelli’s statement and Article I, Section 9 demonstrate Lincoln’s dilemma during the early days of the Civil War?

Methods of Analysis: As a whole, the class will analyze the documents by asking the following questions:

1. What was the occasion for writing each document?
2. Who is the audience for each document?
3. What is the purpose of each document?
4. What is the background of the author or speaker associated with each document?

Procedures:

1. Ask the students to explain why habeas corpus is crucial to civil liberties.
2. Ask students to read Lincoln’s Proclamation Suspending the Writ of Habeas Corpus. Would you have supported or opposed this proclamation? Explain.
3. Have the students read Lincoln’s letter to Winfield Scott. Why was Lincoln confident that Scott would carry out the order?
4. Ask the students to read Chief Justice Taney’s legal opinion on Lincoln’s Proclamation of Suspension. Do you suppose Taney supported or opposed Lincoln’s Proclamation? Explain.
5. Select a student to read Lincoln’s reply to Corning. How does Lincoln justify his Proclamation? Would you have been persuaded by Lincoln’s reply? Explain.

Summary Questions:

1. Was Lincoln justified in suspending civil liberties during the war? Explain.
2. Have students return to Lincoln’s Proclamation Suspending the Writ of Habeas Corpus. Create a Venn diagram on the chalkboard that places this issue within the context of civil liberties during the Civil War and during our current War on Terror.

Application Questions:

1. On an overhead share with students the following quotation from President George W. Bush's Second Inaugural Address.

“The rulers of outlaw regimes can know that we still believe as Abraham Lincoln did, “Those who deny freedom to others deserve it not for themselves, and under the rule of a just God, cannot long retain it.”

2. Ask the students to consider why the President may have invoked the memory of Abraham Lincoln. How could opponents and supporters of his policy use Lincoln's quotation to strengthen their respective positions.

3. Based on this lesson, do you believe Lincoln would have supported the Patriot Act? Explain. (Provide a listing of key elements in the Patriot Act)

4. Have the students research other periods in American history when civil rights have been subordinated to the concern for security and explain whether they agree with the action taken at that time.